

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
v.) Cr. No. 05-10154-MLW
)
JOHN J. DIAMONT, JR.)

ORDER

WOLF, D.J.

December 14, 2006

For the reasons stated in court on December 13, 2006, it is hereby ORDERED that:

1. The government shall, by December 21, 2006, disclose to the defendant John J. Diamond, Jr. a description of the information in its possession concerning the possible involvement of Yale Strogoff, his son, or his company in a theft of titanium, or make an ex parte submission to the court seeking to establish that such information need not be disclosed as a reward or inducement to Mr. Strogoff.

2. With regard to defendant's Motion to Exclude Disputed Invoices and Checks:

a. All submissions are SEALED.
b. Counsel shall, by January 5, 2007, confer concerning the required further briefing on whether a pretrial hearing should be granted on the issues of whether certain documents and statements are admissible pursuant to Federal Rules of Evidence 801(d)(2)(E) or 803(6).

c. The parties shall, by January 12, 2006, file

supplementary briefs addressing the issues raised by the court on December 13, 2006. Among other things: (i) the government's submission shall include a detailed proffer of the evidence on which it will rely in requesting "Petroziello" rulings, see, United States v. Ferra, 900 F.2d 1057, 1059 (7th Cir. 1990); and (ii) the parties shall address the degree to which a pretrial decision on the Rule 801(d)(2)(E) and/or 803(6) issue will require determination of the general issue to be resolved at trial, see United States v. Russell, 919 F.2d 795, 797 (1st Cir. 1990).

d. Any replies shall be filed by January 17, 2007.

e. A further hearing to determine whether a pretrial evidentiary hearing should be conducted will commence on January 23, 2007, at 2:00 p.m. and, if necessary, continue on January 23, 2007.

3. The court is reserving judgment on the Government's Motion to Exclude Criminal Conduct of Yale Strogoff because, among other things, it cannot now conduct on a properly informed basis the balancing required by Federal Rule of Evidence 403.

4. The Government's Motion to Inspect and Copy Documents defendant obtained by defendant's pretrial subpoenas is DENIED without prejudice to possible reconsideration at trial.

5. Trial shall commence on April 30, 2007, at 9:00 a.m.

6. As Mr. Strogoff is not a party to this action, his attorney shall be removed from the list of those on the docket who automatically receive submissions in this case or who must be

served.

/s/ MARK L. WOLF
UNITED STATES DISTRICT JUDGE